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**SEP 29 2008**

**OFFICE OF PETITIONS**

In re Application of	:	
Banerjee, et al.	:	
Application No. 09/909,248	:	DECISION
Filed 19 July, 2001	:	
Attorney Docket No. 11465/491	:	

This is a decision on the petition, filed on 12 February, 2007, under 37 C.F.R. §1.137(a) for revival of an application abandoned due to unavoidable delay.

The Office regrets the delay in addressing this matter, however, the instant petition was presented to the attorneys in the Office of Petitions only at this writing.

The petition under 37 C.F.R. §1.137(a) is **DISMISSED**.

Any further petition to revive must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(a)."

Petitioner's alternative is to file a petition under 37 C.F.R. §1.137(b), discussed below.

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to Allegations of  
Unavoidable Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(a) are the petition and fee therefor, a reply, a proper showing of unavoidable delay under the regulation, and, where applicable, a terminal disclaimer and fee.

Petitioner's attention is directed to the the guidance in the Commentary in the Manual of Patent Examining Procedure at MPEP §711.03(c ) as to any petition to revive.

### BACKGROUND

The record reflects as follows:

Petitioner failed to reply timely and properly to the Notice of non-Compliant Appeal Brief mailed on 23 September, 2005, with reply due absent extension of time on or before 23 October, 2005.

Petitioner filed a supplemental Appeal Brief on 22 December, 2005, accompanied by a request and fee for extension of time.

The instant application went abandoned by operation of law after midnight 23 December, 2005.

The Office mailed the Notice of Abandonment on 4 December, 2006.

The statement in the Notice of Abandonment indicated that Petitioner failed to comply with the applicable rules (e.g., 37 C.F.R. §41.37) and applicable guidance (e.g., MPEP §1205.02, §1205.03)..

Petitioner filed the instant petition with fee on 12 February, 2007, with a reply in the form of a second supplemental Appeal Brief, and averred, *inter alia*, that "Applicants believed that their response to Notice of Non-Compliant Appeal Brief was acceptable to the Patent Office and thus compliant." Petitioner makes the statement notwithstanding his failure to include expressly required components of an appeal brief (e.g., 37 C.F.R. §41.37(c ), et seq.).

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation—since all owe to the Office the continuing duty to disclose.<sup>1</sup>

The availability of applications and application papers online to Petitioners/practitioners who diligently associate their Customer Number with the respective application(s) now provides practitioners on-demand information as to events/transactions in an application.

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<sup>1</sup> See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(Petitioner obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

As to Allegations of  
Unavoidable Delay

The requirements under 37 C.F.R. §1.137(a) have not been satisfied as of this writing in that Petitioner failed to make the showing of unavoidable delay as required.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.137(a) is **dismissed**.

ALTERNATIVE VENUE

Should Petitioner wish to revive the application, Petitioner may wish to properly file a petition to the Commissioner requesting revival of an application abandoned due to unintentional delay under 37 C.F.R. §1.137(b). (See: [http://www.uspto.gov/web/offices/pac/mpep/documents/0700\\_711\\_03\\_c.htm#sect711.03c](http://www.uspto.gov/web/offices/pac/mpep/documents/0700_711_03_c.htm#sect711.03c) )

A petition to revive on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by the reply, the petition fee, a terminal disclaimer and fee where appropriate and a statement that “the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.” (The statement is in the form available online.)


Further correspondence with respect to this matter should be addressed as follows:

By Mail:                      Mail Stop PETITION  
                                    Commissioner for Patents  
                                    P. O. Box 1450  
                                    Alexandria, VA 22313-1450

By hand:                     U. S. Patent and Trademark Office  
                                    Customer Service Window, Mail Stop Petitions  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

By facsimile:              **(571) 273-8300**  
                                    Attn: Office of Petitions

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2<sup>2</sup>) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

  
/John J. Gillon, Jr./  
John J. Gillon, Jr.  
Senior Attorney  
Office of Petitions

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<sup>2</sup> The regulations at 37 C.F.R. §1.2 provide:

**§1.2 Business to be transacted in writing.**

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of Petitioners or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.